



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
DELAWARE STATE BUILDING  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE  
TAX RULING 81-3

November 1, 1981

- Personal Income Tax - Definition of Resident

House Bill No. 196, Vol. 63, Ch. 122, Laws of Del., approved July 9, 1981, amends the definition of "resident" for Delaware personal income tax purposes to provide in general that an individual physically present and working in a foreign country for a period of 18 months or longer will not be considered domiciled in this State (and therefore will be taxed as a non-resident) if certain requirements are met. Non-residents are taxable only on income derived from sources in Delaware.

Under this Act, Section 1103, 30 Del. C., is amended to read as follows:

"A resident individual of this State means an individual:

(1) who is domiciled in this State to the extent of the period of such domicile, provided, however, an individual who (a) is present in a foreign country or countries for at least 495 full days in any consecutive 18 month period, and (b) during such period of 18 consecutive months is not present in this State for more than 45 days, and does not maintain a permanent place of abode in this State at which his spouse, children or parents are present for more than 45 days, and (c) is not an employee of the United States, its agencies or instrumentalities (including members of the Armed Forces) shall not be considered a resident of this State during such period; or

(2) who maintains a place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State."

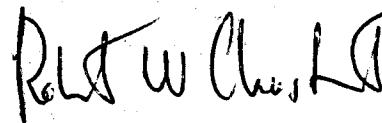
Under this amendment (underscored above), a taxpayer domiciled in Delaware who is transferred or otherwise employed to work in a foreign

country, and who is physically present in such foreign country for at least 495 days in any consecutive 18 month period will not be considered a resident of this State for income tax purposes, provided he does not spend more than 45 days in this State during such 18 month period, and that he does not maintain a residence in this State at which his spouse, children or parents reside for more than 45 days during such period. This provision does not apply to employees of the U.S. Government, including members of the armed forces.

This amendment is effective for taxable years beginning on or after January 1, 1981. A taxpayer who commences employment in a foreign country during 1981 should file on or before April 30, 1982, Form 1027 A, Application for Extension of Time to File the 1981 Delaware Income Tax Return, stating that he expects to qualify under the 495 day rule specified in Section 1103 and giving the date of his arrival in the foreign country. Extensions should be requested for a period ending 30 days after the expiration of the 18 month period, and a copy of the taxpayer's request for Federal extension should also be attached.

If a taxpayer commenced employment and was physically present in a foreign country for all or part of the year 1980, such period may be taken into account in determining whether he qualifies under the 495 day rule for the taxable year 1981. For purposes of determining whether the taxpayer has complied with the 45 day restriction on time spent in Delaware during the 18 month period, any portion of a day spent in Delaware shall count as one full day.

In addition to the foregoing amendment, H. B. 196 also amended Section 1109, 30 Del. C., relating to itemized deductions, to make it clear that the itemized deductions authorized by Section 1109 includes the deduction for taxes paid to a foreign country in cases where the taxpayer elects to claim the foreign tax credit in lieu of a deduction for Federal income tax purposes. Of course, no deduction is allowable for foreign taxes paid which are attributable to income excluded from Delaware taxable income.



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